IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 27276 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRIMARY HEALTH CENTRE - Petitioner(s)
Versus
INDRASINH CHANDRASINH ZALA - Respondent(s)

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Appearance :
MR KALPESH N SHASTRI for Petitioner(s) : 1,
MR MUKESH H RATHOD for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 12/04/2007

ORAL JUDGMENT

1. Primary Health Centre, Kadjodra, through the District Development Officer of the capital of the State, i.e. Gandhinagar, has invoked Articles 226 and 227 of the Constitution for

granting the prayers of setting aside the award and order dated 6.10.2003 made by Labour Court, Ahmedabad in Reference (LCA) No. 1409 of 1991; without any plausible explanation for the delay. According to the impugned award, the Reference before the Labour Court was already decided earlier by an *ex-parte* award dated 6.3.1997 after granting to the petitioner so many adjournments and opportunities while the petitioner had not cared to even file a formal written statement in the court. Thereafter, that *ex-parte* award dated 6.3.1997 was set aside upon a Misc.Application made by the petitioner and even thereafter, nobody had remained present before the court nor was any evidence led before the Labour Court on behalf of the petitioner. Therefore, the Labour Court noted that, by consistent absence and non-cooperation, the petitioner had adopted a policy of merely delaying the adjudication which could be only deprecated. Under such circumstances, the Labour Court made the impugned award on the basis of the

statement of claim and deposition of the respondent which was never controverted or challenged in cross-examination.

2. Obviously, even after the second *ex-parte* award made in the year of 2003 and being aware about the rights and claim of the respondent, the petitioner has failed to either adopt appropriate alternative remedy of making application for setting aside the *ex-parte* award or approach this court within reasonable period; with the result that the workman discharged from service on 28.2.1991 is made to go from pillar to post for 16 years for any relief and the litigation is carried on at public expenses in the most lackadaisical manner.

3. Upon issuance of notice to the respondent, learned counsel Mr M.H. Rathod has appeared and he submitted that the impugned award was, as yet, not implemented and even the amount of Rs.10,000/- ordered to be paid by way of cost

and subject to payment of which the Reference was restored by order dated 20.8.2002, was not paid to the respondent. He further submitted that the petitioner had neglected to attend the court and take any defence despite an advocate namely; Mr B.R. Raval having been engaged and having appeared in the Labour Court for the petitioner.

4. In view of the above facts, learned counsel for the petitioner did not and could not press any plea on factual basis. He, therefore, pressed into service the observations made by the Supreme Court in ***Rafik & anr. v. Munshilal & anr.*** (AIR 1981 SC 1400), that the party who has selected his advocate, briefed him and paid his fee can remain supremely confident that his lawyer will look after his interest and such an innocent party who has done everything in his power should not suffer for the inaction, deliberate omission or misdemeanour of his counsel. Relying upon recent judgment of this court in ***Kanjibhai Kalubhai Gamara v. President***

(2004 (0) GLHEL 206105), learned counsel Mr Shastri also submitted that the petitioner may be directed to adopt alternative remedy for filing appropriate application for setting aside the *ex-parte* award, even as no such prayer is made in the petition and admittedly, the petitioner does not require a direction to itself to approach the appropriate forum.

5. It is abundantly clear from the above record of facts and proceedings before the court that the petitioner has consistently failed to cooperate in the legal proceedings, ignored notices of the Labour Court, adopted dilatory practices and wasted public money only to obstruct proper adjudication of the industrial dispute. Admittedly, the petitioner has not taken any action against the advocate on whom the blame is sought to be cast. The office or department of the petitioner is bound to have been managed or overseen by some responsible officer of high rank and it does not lie in the

mouth of even an illiterate person to say that he could not participate in the legal proceedings out of ignorance, even after an ex-parte order being set aside at his instance. Therefore, the whole attitude and approach of the petitioner in delaying the judicial proceedings and initiating one after the other proceedings appear to be deliberate and calculated to deny justice to the respondent whose very basis of the claim was four years of continuous service at wages of Rs.300/- per month and illegal termination of even that employment. Thus, this is a gross case of abuse of the process of court at the instance of a department or institution which would obviously be "State" within the definition of Article 12 of the Constitution. Besides obvious loss to the public exchequer, the present litigation has unduly added to the load of unnecessary litigations on the already overburdened judicial system. Therefore, it is a fit case wherein appropriate disciplinary action against the officer or officers for the time being in charge

of the petitioner, Primary Health Centre, should be initiated and all the loss caused by them to the institution should be recovered.

6. Accordingly, the petition is dismissed on the grounds of laches and for being devoid of merits and on account of availability of appropriate alternative remedy. The petitioner may, in the public interest, consider initiation of appropriate disciplinary action against the officers in charge of the Primary Health Centre, who were required to respond to the notices of the Labour Court and who may be found to be negligent in the discharge of their duties. The amounts of backwages and the cost of litigation may also be recovered from the salaries of or payments to be made to such of the officers who may be found to be negligent in the discharge of their duties as the Head of the Primary Health Centre, after affording them opportunity of being heard and in accordance with the relevant rules. Notice is discharged. The amount of cost

of Rs. 5,000/- ordered to be deposited by the petitioner by the earlier order dated 28.12.2006 shall be paid to the respondent by the office by an account payee cheque in his name. A copy of this judgment shall be served upon the District Development Officer, District Panchayat, Gandhinagar for appropriate action and implementation of the orders and impugned award of the Labour Court.

sd/-
[D. H. Waghela, J.]

msp